

1 **Counsel Listed on Signature Page**
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5 **UNITED STATES DISTRICT COURT**
6 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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8 BLACKBELT SMARTPHONE
9 DEFENCE LTD.,

Case No. 2:22-cv-04342 GW (PDX)

10 Plaintiff/Counter-Defendant,

11 **STIPULATED PROTECTIVE
12 ORDER**

13 PHONECHECK SOLUTIONS, LLC,

14 Defendant/Counter-Plaintiff,

1 Blackbelt Smartphone Defence Ltd. and Phone Check Solutions, Inc., (all the
2 above collectively the “Parties,” individually a “Party”), by and through their
3 respective counsel of record, stipulate that the following Protective Order shall apply
4 in the above-captioned action, subject to approval and entry by the Court.

5 **1. A. PURPOSE AND LIMITS OF THIS ORDER**

6 The Parties agree that discovery in this action is likely to involve confidential,
7 proprietary, or private information requiring special protection from public disclosure
8 and from use for any purpose other than this litigation. Such confidential and
9 proprietary materials and private information may consist of, among other things,
10 sensitive and confidential technical information, source code material, confidential
11 business or financial information, information regarding confidential business
12 practices, asserted paywall-protected digital content, or other confidential research,
13 development, or commercial information (including information implicating privacy
14 or data protection rights of third parties), intellectual property in development,
15 information otherwise generally unavailable to the public, or which may be privileged
16 or otherwise protected from disclosure under U.S. or non-U.S. state or federal statutes,
17 court rules, case decisions, or common law. Accordingly, the Parties hereby stipulate
18 to and petition the Court to enter this Stipulated Protective Order. The Parties
19 acknowledge that this Order does not confer blanket protections on all disclosures or
20 responses to discovery, and the protection it gives from public disclosure and use
21 extends only to the specific material entitled to confidential treatment under the
22 applicable legal principles. The Parties further acknowledge that this Order does not
23 automatically authorize the filing under seal of material designated under this Order.
24 Instead, the Parties must comply with L.R. 79-5.1 if they seek to file anything under
25 seal. This Order does not govern the use at trial of material designated under this Order.

1 **B. GOOD CAUSE STATEMENT**

2 This action is likely to involve source code, trade secrets, customer and pricing
3 lists and other valuable research, development, commercial, financial, technical
4 and/or proprietary information for which special protection from public disclosure
5 and from use for any purpose other than prosecution of this action is warranted. Such
6 confidential and proprietary materials and information consist of, among other
7 things, protected code written in C, C++, Java, assembler, VHDL, Verilog, SQL, and
8 similar programming languages, confidential financial information, information
9 regarding confidential business practices, customer information, or other confidential
10 research, development, or commercial information (including information
11 implicating privacy rights of third parties), information otherwise generally
12 unavailable to the public, or which may be privileged or otherwise protected from
13 disclosure under state or federal statutes, court rules, case decisions, or common law.
14 Accordingly, to expedite the flow of information, to facilitate the prompt resolution
15 of disputes over confidentiality of discovery materials, to adequately protect
16 information the parties are entitled to keep confidential, to ensure that the parties are
17 permitted reasonable necessary uses of such material in preparation for and in the
18 conduct of trial, to address their handling at the end of the litigation, and serve the
19 ends of justice, a protective order for such information is justified in this matter. It is
20 the intent of the parties that information will not be designated as confidential for
21 tactical reasons and that nothing be so designated without a good faith belief that it
22 has been maintained in a confidential, non-public manner, and there is good cause
23 why it should not be part of the public record of this case.

24 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
25 **SEAL**

26 The parties further acknowledge that this Stipulated Protective Order does not
27 entitle them to file confidential information under seal; Local Civil Rule 79-5 sets
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1 forth the procedures that must be followed and the standards that will be applied
2 when a party seeks permission from the court to file material under seal.

3 There is a strong presumption that the public has a right of access to judicial
4 proceedings and records in civil cases. In connection with non-dispositive motions,
5 good cause must be shown to support a filing under seal. See Kamakana v. City and
6 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
7 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics,
8 Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
9 good cause showing), and a specific showing of good cause or compelling reasons
10 with proper evidentiary support and legal justification, must be made with respect to
11 Protected Material that a party seeks to file under seal. The parties' mere designation
12 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
13 submission of competent evidence by declaration, establishing that the material
14 sought to be filed under seal qualifies as confidential, privileged, or otherwise
15 protectable—constitute good cause.

16 Further, if a party requests sealing related to a dispositive motion or trial, then
17 compelling reasons, not only good cause, for the sealing must be shown, and the
18 relief sought shall be narrowly tailored to serve the specific interest to be protected.
19 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
20 item or type of information, document, or thing sought to be filed or introduced
21 under seal in connection with a dispositive motion or trial, the party seeking
22 protection must articulate compelling reasons, supported by specific facts and legal
23 justification, for the requested sealing order. Again, competent evidence supporting
24 the application to file documents under seal must be provided by declaration.
25 Any document that is not confidential, privileged, or otherwise protectable in its
26 entirety will not be filed under seal if the confidential portions can be redacted. If
27 documents can be redacted, then a redacted version for public viewing, omitting only
28 the confidential, privileged, or otherwise protectable portions of the document, shall

1 be filed. Any application that seeks to file documents under seal in their entirety
2 should include an explanation of why redaction is not feasible.

3 **2. DESIGNATING PROTECTED MATERIAL**

4 **2.1 Manner and Timing of Designations.** Except as otherwise provided in
5 this Order, or as otherwise stipulated or ordered, disclosure or discovery Material that
6 qualifies for protection under this Order must be clearly so designated before the
7 material is disclosed or produced. For information in documentary form, whether
8 electronic or hard copy, designation under this Order requires the designator to affix
9 the applicable legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”)
11 to each page that contains protected material. With respect to electronic documents
12 produced in native format, the applicable legend may be included in a specified
13 metadata field. For testimony given in deposition or other proceeding, the designator
14 shall specify all protected testimony and the level of protection being asserted. It may
15 make that designation during the deposition or proceeding, or may invoke, on the
16 record or by written notice to all parties on or before the next business day, a right to
17 have up to 21 days from the deposition or proceeding to make its designation. For
18 information produced in some form other than documentary and for any other tangible
19 items (excluding hard drives or other document storage media), the Producing Party
20 shall affix in a prominent place on the exterior of the container or containers in which
21 the information is produced the “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – SOURCE CODE”
23 legend. If only a portion or portions of the information warrants protection, the
24 Producing Party, to the extent practicable, shall identify the protected portion.

25 **2.1.1** A party or non-party that makes original documents or materials available
26 for inspection need not designate them for protection until after the
27 inspecting party has identified which material it would like copied and
28 produced. During the inspection and before the designation, all material

1 shall be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES
2 ONLY. After the inspecting party has identified the documents it wants
3 copied and produced, the producing party must designate the documents,
4 or portions thereof, that qualify for protection under this Order.

5 **2.1.2** Parties shall give advance notice if they expect a deposition or other
6 proceeding to include designated material so that the other parties can
7 ensure that only authorized individuals are present at those proceedings
8 when such material is disclosed or used. The use of a document as an
9 exhibit at a deposition shall not in any way affect its designation.
10 Transcripts containing designated material shall have a legend on the title
11 page noting the presence of designated material, and the title page shall
12 be followed by a list of all pages (including line numbers as appropriate)
13 that have been designated, and the level of protection being asserted. The
14 designator shall inform the court reporter of these requirements. Any
15 transcript that is prepared before the expiration of the 21-day period for
16 designation shall be treated during that period as if it had been designated
17 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY unless
18 otherwise agreed. After the expiration of the 21-day period, the transcript
19 shall be treated only as actually designated.

20 **2.2 Inadvertent Failures to Designate.** An inadvertent failure to designate
21 does not, standing alone, waive protection under this Order. Upon timely assertion or
22 correction of a designation, all recipients must make reasonable efforts to ensure that
23 the material is treated according to this Order.

24 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **3.1 Generally.** Any Party or Non-Party may challenge a designation of
26 confidentiality at any time that is consistent with the Court’s Scheduling Order. All
27 challenges to confidentiality designations shall proceed under L.R. 37-1 through L.R.
28 37-4.

1 **3.2 Meet and Confer.** The Challenging Party shall initiate the informal dispute
2 resolution process set forth in the Court's Procedures and Schedules. Any challenge
3 submitted to the Court shall be via a joint stipulation pursuant to Local Rule 37-2 and
4 consistent with the process set forth in the Court's Procedures and Schedules.

5 **3.3 The burden of persuasion in any such challenge proceeding shall be on**
6 **the Designating Party.** Frivolous challenges, and those made for an improper purpose
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
8 expose the Challenging Party to sanctions. Unless the Designating Party has waived
9 or withdrawn the confidentiality designation, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the Producing
11 Party's designation until the Court rules on the challenge.

12 **4. ACCESS TO DESIGNATED MATERIAL**

13 **4.1 Basic Principles.** A receiving party may use designated material only for
14 prosecuting, defending, or attempting to settle this litigation. Designated material may
15 be disclosed only to the categories of persons and under the conditions described in
16 this Order. When the Action has been terminated, a receiving party must comply with
17 the provisions of Section 10 below (FINAL DISPOSITION). Protected material must
18 be stored and maintained by a receiving party at a location and in a secure manner that
19 ensures that access is limited to the persons authorized under this Order.

20 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
21 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
22 designator, a receiving party may disclose any material designated CONFIDENTIAL
23 only to:

24 **4.2.1** The receiving party's outside counsel of record in this action and
25 employees of outside counsel of record to whom disclosure is reasonably necessary;

26 **4.2.2** The officers, directors, and employees of the receiving party to whom
27 disclosure is reasonably necessary, and who have signed the Agreement to Be Bound
28 (Exhibit A);

1 **4.2.3** Experts retained by the receiving party's outside counsel of record to
2 whom disclosure is reasonably necessary, and who have signed the Agreement to Be
3 Bound (Exhibit A);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, mediators, and professional vendors to whom disclosure is reasonably
7 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.2.6** During their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the Agreement to Be Bound (Exhibit A);
10 and

11 **4.2.7** The author or recipient of a document containing the material, or a
12 custodian or other person who otherwise possessed or knew the information.

13 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES
ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without
Further Approval.** Unless otherwise ordered by the Court or permitted in writing by
14 the designator, a receiving party may disclose material designated HIGHLY
15 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
16 SOURCE CODE without further approval only to:

17 **4.3.1** The receiving party's outside counsel of record in this action and
18 employees of outside counsel of record to whom it is reasonably necessary to disclose
the information;

19 **4.3.2** The Court and its personnel;

20 **4.3.3** Outside court reporters and their staff, professional jury or trial
21 consultants, and mediators who have signed the Agreement to Be Bound (Exhibit A);

22 **4.3.4** The author or recipient of a document containing the material, or a
23 custodian or other person who otherwise possessed or knew the information; and

24 **4.3.5.** Professional vendors (1) who are hired solely to provide services related
25 to this litigation to whom disclosure is reasonably necessary to perform those services,

1 (2) who do not provide coding services to the parties or their affiliates; and (3) who
2 have signed the Agreement to Be Bound (Exhibit A),

3 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
4 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL**
5 **– SOURCE CODE Material to In-House Counsel or Experts.** Unless agreed to in
6 writing by the designator:

7 **4.4.1** A party seeking to disclose to in-house counsel any material designated
8 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
9 make a written request to the designator providing the full name of the
10 in-house counsel, the city and state of such counsel's residence, and such
11 counsel's current and reasonably foreseeable future primary job duties
12 and responsibilities in sufficient detail to determine present or potential
13 involvement in any competitive decision-making. In-house counsel are
14 not authorized to receive material designated HIGHLY
15 CONFIDENTIAL – SOURCE CODE.

16 **4.4.2** A party seeking to disclose to an expert retained by outside counsel of
17 record any information or item that has been designated HIGHLY
18 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
19 CONFIDENTIAL – SOURCE CODE must first make a written request
20 to the designator that (1) identifies the general categories of HIGHLY
21 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
22 CONFIDENTIAL – SOURCE CODE information that the receiving
23 party seeks permission to disclose to the expert, (2) sets forth the full
24 name of the expert and the city and state of his or her primary residence,
25 (3) attaches a copy of the expert's current resume, (4) identifies the
26 expert's current employer(s), (5) identifies each person or entity from
27 whom the expert has received compensation or funding for work in his or
28 her areas of expertise (including in connection with litigation) in the past

five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation where the expert has offered expert testimony, including by declaration, report, or testimony at deposition or trial, in the past five years. If the expert believes any of this information at (4) - (6) is subject to a confidentiality obligation to a third party, then the expert should provide whatever information the expert believes can be disclosed without violating any confidentiality agreements, and the party seeking to disclose the information to the expert shall be available to meet and confer with the designator regarding any such confidentiality obligations.

4.4.3 A party that makes a request and provides the information specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the identified in-house counsel or expert unless, within seven days of delivering the request, the party receives a written objection from the designator providing detailed grounds for the objection.

4.4.4 All challenges to objections from the designator shall proceed under L.R. 37-1 through L.R. 37-4.

5. SOURCE CODE

5.1 Designation of Source Code. If production of Source Code is necessary, the producing party may designate it as HIGHLY CONFIDENTIAL – SOURCE CODE if it is, or includes, confidential, proprietary, or trade secret Source Code. “Source Code” is material that includes human-readable programming language text that defines software, firmware, or electronic hardware descriptions. Files containing Source Code shall hereinafter be referred to as “Source Code Files.” Source Code Files include, but are not limited to, files containing Source Code written in C, C++, Java, assembler, VHDL, Verilog, SQL, and similar programming languages. Source Code Files further include “make” files, “include” files, script files, “link” files, and other

1 human-readable text files used in the generation and/or building of software directly
2 executed on a microprocessor, microcontroller, or digital signal processor (DSP).
3 Source Code does not include binary executable files and object code files, nor does it
4 include tools such as compilers or linkers. For clarity, although such materials are not
5 Source Code under this Protective Order, and although this Protective Order does not
6 require or prohibit their production, they may be designated as “HIGHLY
7 CONFIDENTIAL – SOURCE CODE” if produced.

8 **5.2 Location and Supervision of Inspection.** Any Source Code produced in
9 discovery shall be made available for inspection, in a format allowing it to be
10 reasonably reviewed and searched, during normal business hours at an office of the
11 designating party’s counsel or another mutually agreeable location upon reasonable
12 notice to the designating party of the other party’s desire to review the Source Code,
13 any such review to occur prior to the close of expert discovery unless otherwise agreed
14 among the parties. The Source Code shall be made available for inspection on a
15 secured stand-alone computer (that is, a computer not connected to a network, the
16 Internet, or any peripheral device, except that the stand-alone computer may be
17 connected to a printer or printers and dual-display monitors and will have a mouse
18 connected, all other ports must be disabled) in a secured room, and the inspecting party
19 shall not copy, remove, or otherwise transfer any portion of the source code onto any
20 recordable media or recordable device. The Parties agree to make reasonable
21 accommodations for installing Source Code review utilities (such as Cygwin and other
22 review tools) requested by the Receiving Party that will allow counsel, experts, and
23 other authorized reviewers to view, search, and/or analyze the Source Code; provided
24 that such utilities are reasonable and nondestructive to the Source Code. Under no
25 circumstances shall any party use Source Code review tools which allow the Source
26 Code Computer to compile or otherwise reduce Source Code into machine or object
27 code unless such compilation functions have been disabled. No recordable media or
28 recording devices of any kind, including without limitation cameras, cellular

1 telephones, CDs, DVDs, and disk drives, may be permitted into the room containing
2 the Source Code computers (other than a non-networked computer that the producing
3 party may provide for purposes of typing notes as discussed below). The producing
4 party may visually monitor the activities of the inspecting party's representatives
5 during any Source Code review, but only to ensure that there is no unauthorized
6 recording, copying, or transmission of the Source Code.

7 The receiving party's outside counsel and/or expert shall be entitled to take
8 notes relating to the Source Code. The receiving party's outside counsel and/or expert
9 may copy terms used in the Source Code into the notes only to the extent reasonably
10 necessary to support or rebut the claims and defenses of the parties in this case. The
11 receiving party's outside counsel and/or expert may not copy complete code modules
12 or lines of the Source Code into the notes. Such notes shall be considered and marked
13 as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." To the extent that
14 the receiving party's outside counsel and/or expert requests to take notes
15 electronically, rather than by handwriting, the producing party shall provide a
16 notetaking computer in the room in which a Source Code computer is located, which
17 the receiving party's outside counsel and/or expert may use to type their notes. The
18 notetaking computer shall include both Notepad++ and sdelete software utilities. Such
19 notes shall be considered the work product of the receiving party; and the producing
20 party shall make no attempt to retrieve the receiving party's notes from the non-
21 networked computer. The receiving party's expert may copy prior notes and material
22 from a flash drive onto the notetaking computer prior to the review session and may
23 copy their notes from the notetaking computer onto a flash drive which the reviewer
24 may take with them at the end of the day. Any notes generated from the Source Code
25 review may be shared with outside counsel and with any outside experts or consultants
26 who are approved to view material designated "HIGHLY CONFIDENTIAL –
27 SOURCE CODE" under paragraph 4.3 of this Order. Except as permitted above, no
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1 copies of all or any portion of Source Code may leave the room in which the source
2 code is inspected except as otherwise provided herein.

3 **5.3 Persons Having Access to Source Code.** At least seven (7) business days
4 prior to the date on which first access by a particular individual is sought to the secured
5 stand-alone computer (seven-day notice period), outside counsel of record for the
6 inspecting party shall provide a list of individuals, including attorneys, seeking to
7 access to the stand-alone computer. The producing party shall have the right to make
8 reasonable objection to such access in accordance with this Section 4.4. During the
9 pendency of the seven-day notice period, no listed individual shall have access to the
10 stand-alone computer, unless otherwise agreed by the parties. If an objection to any
11 specific listed individual is made, that individual shall not have access to the stand-
12 alone computer until resolution of such objection.

13 **5.4 Paper Copies of Source Code Excerpts.** Except as otherwise provided
14 herein, no copies of any portion of the Source Code may leave the secure location in
15 which the Source Code is inspected. Further, except as provided herein, no written or
16 electronic record of the source code is permitted. Notwithstanding the foregoing, the
17 inspecting party may request printed copies of specific portions of Source Code
18 designated as HIGHLY CONFIDENTIAL - SOURCE CODE. Within two (2)
19 business days of the printing request, the producing party must either (i) provide up to
20 three (3) paper copies of Source Code designated as HIGHLY CONFIDENTIAL –
21 SOURCE CODE including Bates numbers and appropriate confidentiality labels when
22 printed, as they appear on any stand-alone computers, of each requested file, correlated
23 to the beginning Bates number of the corresponding print-out, or, alternatively, the
24 producing party may brand printouts with the filepath and filename of each file, as it
25 appears on any stand-alone computer; or (ii) object that a printing request is excessive
26 and/or not done for a permitted purpose. The producing party must retain copies of
27 any portions of Source Code printed. The entire code or an unreasonably large portion
28 of the code must not be requested. The inspecting party is not entitled to request copies

1 in order to review blocks of source code designated as HIGHLY CONFIDENTIAL –
2 SOURCE CODE elsewhere in the first instance, i.e., as an alternative to reviewing the
3 materials electronically on the stand-alone computers provided by the producing party,
4 as the parties acknowledge and agree that the purpose of the protections herein would
5 be frustrated by printing portions of Source Code for review and analysis elsewhere.
6 Printouts of the Source Code that exceed 10 continuous pages will be presumed
7 excessive unless the inspecting party provides a compelling justification that such
8 printed portions are necessary. If the producing party objects within two (2) business
9 days of a printing request that the printing request is excessive and/or not done for a
10 permitted purpose, the producing party and inspecting party will meet and confer
11 within two (2) business days of the producing party's objection. If the producing party
12 and the inspecting party cannot resolve the objection, the inspecting party may, within
13 two (2) business days after the meet and confer, seek the Court's resolution of whether
14 the request is narrowly tailored for a permitted purpose. The burden will be on the
15 inspecting party to demonstrate that such portions are no more than is reasonably
16 necessary for a permitted purpose, and not merely for the purpose of review and
17 analysis in another location.

18 **5.5 Access Record.** Access to and review of the Source Code shall be strictly
19 for the purpose of investigating the claims and defenses at issue in the above-captioned
20 case. No person shall review or analyze any Source Code for purposes unrelated to
21 this case, nor may any person use any knowledge gained as a result of reviewing
22 Source Code in this case in any other pending or future dispute, proceeding, or
23 litigation. The inspecting party shall maintain a record of any individual who has
24 inspected any portion of the Source Code in electronic or paper form and such record
25 shall include (i) the name of each person who accessed the Source Code; (ii) the date
26 of access; and (iii) the location of access. The inspecting party must produce such log
27 to the producing party within one month of final disposition of this action or, during
28 this action, upon seven (7) business days' advance notice to inspecting party only when

1 the producing party has a good faith reasonable basis for believing that a violation of
2 Section 5.4 of this Stipulated Protective Order has occurred and explains the basis for
3 such belief in writing at the time of the request for the log. The inspecting party shall
4 maintain all paper copies of any printed portions of the Source Code in a secured,
5 locked container. The inspecting party may not reproduce the paper copies of the
6 Source Code, except as provided elsewhere in this Stipulated Protective Order, absent
7 written agreement of the producing party. The inspecting party shall not convert any
8 of the information contained in the paper copies into any electronic format other than
9 for the preparation of a pleading, exhibit, expert report, discovery document,
10 deposition transcript, or other Court document. Any paper copies used during a
11 deposition shall be retrieved at the end of each day and must not be left with a court
12 reporter or any other unauthorized individual.

13 **5.6 Use of Source Code in Deposition.** A party that wants to use any printouts
14 of Source Code designated as HIGHLY CONFIDENTIAL – SOURCE CODE at a
15 deposition may make up to three (3) additional paper copies of such Source Code solely
16 for use in the deposition. Copies of Source Code designated as HIGHLY
17 CONFIDENTIAL – SOURCE CODE that are marked as deposition exhibits must not
18 be provided to the court reporter or attached to deposition transcripts; rather the
19 deposition record will identify such an exhibit by its production numbers. All printouts
20 of Source Code designated as HIGHLY CONFIDENTIAL – SOURCE CODE brought
21 to a deposition, except for any copies containing the notes or work product of the non-
22 producing party, must be collected by the producing party at the conclusion of the
23 deposition. In addition (or as an alternative to the use of printouts at a deposition), the
24 producing party shall, on request, make a copy of the Source Code available on a single
25 stand-alone computer (but otherwise in the same format in which the Source Code is
26 available under Section 5.2 above) during depositions of witnesses who would
27 otherwise be permitted access to such Source Code. The requesting party shall make
28 such requests at least seven (7) calendar days before the deposition. The producing

1 party shall make reasonable efforts to comply with such a request made less than seven
2 (7) calendar days before a deposition, provided the request is made in good faith and
3 could not reasonably under the circumstances have been made sooner.

4 **5.7 Electronic Images and Electronic Copies of Source Code.** Except as
5 provided herein, absent express written permission from the producing party, the
6 inspecting party may not create electronic images, or any other images, or make
7 electronic copies, of any Source Code designated as HIGHLY CONFIDENTIAL –
8 SOURCE CODE from any paper copy of the Source Code for use in any manner
9 (including, by way of example only, the inspecting party may not scan Source Code
10 designated as HIGHLY CONFIDENTIAL – SOURCE CODE to a PDF or photograph
11 the code). Paper copies of the Source Code designated as HIGHLY CONFIDENTIAL
12 – SOURCE CODE also may not be converted by the inspecting party into an electronic
13 document, and may not be scanned using optical character recognition (“OCR”)
14 technology. If either party reasonably believes that it needs to submit a portion of
15 Source Code designated as HIGHLY CONFIDENTIAL – SOURCE CODE as part of
16 a filing with the Court or as an exhibit and/or demonstrative aid at a hearing or trial,
17 the parties must meet and confer as to how to make such a filing or effect such a use
18 while protecting the confidentiality of the Source Code. If the parties are unable to
19 reach agreement at the meet and confer about how such filing or use shall be made,
20 the inspecting party agrees that it must observe the following minimum protections in
21 making the filing: (i) the inspecting party will rely on expert declarations, testimony,
22 or other means to describe the relevant feature or functionality of the Source Code
23 (including by identifying the corresponding production number(s) and line number(s)
24 of the referenced source code), rather than copying portions of the Source Code into a
25 filing, to the extent possible; (ii) if any portion of Source Code is included in a filing,
26 exhibit, or demonstrative aid, the inspecting party will copy the minimal amount of
27 Source Code that is necessary for purposes of that filing, exhibit, or demonstrative aid;
28 (iii) a filing will be made only under seal, and all confidential information concerning

1 the Source Code must be redacted or removed in any public versions of the filed
2 documents; (iv) a use at a hearing or trial will be made only after request that the Court
3 seal the courtroom to prevent members of the public from viewing or receiving
4 information about such Source Code; and (v) the inspecting party's communication
5 and/or disclosure of electronic files or other materials containing any portion of Source
6 Code in connection with a filing must at all times be limited solely to individuals who
7 are expressly authorized to view Source Code under the provisions of this Order, and
8 all such individuals must be identified on the log as reviewers and/or recipients of
9 paper copies in accordance with Section 5.4.

10 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
11 **IN OTHER LITIGATION**

12 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
13 compliance with a lawful subpoena or court order. The purpose of the duties described
14 in this section is to alert the interested parties to the existence of this Order and to give
15 the designator an opportunity to protect its confidentiality interests in the court where
16 the subpoena or order issued.

17 **7.2 Notification Requirement.** If a party is served with a subpoena or a court
18 order issued in other litigation that compels disclosure of any information or items
19 designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
21 that party must:

22 **7.2.1** Promptly notify the designator in writing. Such notification shall
23 include a copy of the subpoena or court order;

24 **7.2.2** Promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by
26 the subpoena or order is subject to this Order. Such notification shall include a
27 copy of this Order; and

1 **7.2.3** Cooperate with all reasonable procedures sought by the designator
2 whose material may be affected.

3 **7.3 Wait For Resolution of Protective Order.** If the designator timely seeks
4 a protective order, the party served with the subpoena or court order shall not produce
5 any information designated in this action as CONFIDENTIAL, HIGHLY
6 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
7 SOURCE CODE before a determination by the court where the subpoena or order
8 issued, unless the party has obtained the designator's permission. The designator shall
9 bear the burden and expense of seeking protection of its confidential material in that
10 court.

11 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
13 designated material to any person or in any circumstance not authorized under this
14 Order, it must immediately (1) notify in writing the designator of the unauthorized
15 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated
16 material, (3) inform the person or persons to whom unauthorized disclosures were
17 made of all the terms of this Order, and (4) use reasonable efforts to have such person
18 or persons execute the Agreement to Be Bound (Exhibit A).

19 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 The production of privileged or work-product protected documents,
22 electronically stored information ("ESI") or information, whether inadvertent or
23 otherwise, is not a waiver of the privilege or protection from discovery in this case or
24 in any other federal or state proceeding. This Order shall be interpreted to provide the
25 maximum protection allowed by Federal Rule of Evidence 502(d).

26 When a producing party gives notice that certain inadvertently produced
27 material is subject to a claim of privilege or other protection, the obligations of the
28 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Nothing

1 contained herein is intended to or shall serve to limit a party's right to conduct a review
2 of documents, ESI or information for relevance, responsiveness and/or segregation of
3 privileged and/or protected information before production.

4 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION**

5 **9.1** The terms of this Protective Order shall be applicable to any Third-Party
6 that produces information which is designated by such Third-Party as "Confidential"
7 or "Highly Confidential – Attorneys' Eyes Only" Information or Items.

8 Such information produced by Non-Parties in connection with this litigation is
9 protected by the remedies and relief provided by this Order. Nothing in these
10 provisions should be construed as prohibiting a Non-Party from seeking additional
11 protections.

12 **10. FINAL DISPOSITION**

13 Within 60 days after the final disposition of this action, each party shall return
14 all designated material to the designator or destroy such material, including all copies,
15 abstracts, compilations, summaries, and any other format reproducing or capturing any
16 designated material. The receiving party must submit a written certification to the
17 designator by the 60-day deadline that (1) identifies (by category, where appropriate)
18 all the designated material that was returned or destroyed, and (2) affirms that the
19 receiving party has not retained any copies, abstracts, compilations, summaries, or any
20 other format reproducing or capturing any of the designated material. Final disposition
21 shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
22 with or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law. This provision shall not prevent counsel from retaining an
26 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports,

1 attorney work product, and consultant and expert work product, even if such materials
2 contain designated material. Any such archival copies remain subject to this Order.

3 **11. MISCELLANEOUS**

4 **11.1 Right to Further Relief or Amendments.** Nothing in this Order abridges
5 the right of any person to seek its modification by the Court in the future. The Parties
6 may seek to amend this Protective Order by filing a joint stipulation identifying the
7 modification, or move the Court to modify the protective order if the Parties cannot
8 come to an agreeable joint stipulation.

9 **11.2 Right to Assert Other Objections.** By stipulating to the entry of this
10 Protective Order, no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any
13 ground to use in evidence of any of the material covered by this Protective Order.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 Dated: February 28, 2023

3 */s/ Dalton K. Hughes*

4 Andrew J. Avsec
5 William H. Frankel
6 Vincent J. Galluzzo
7 Mariam Sarwar
8 Dalton K. Hughes
**Counsel for Plaintiff/
Counter-Defendant**
Blackbelt Smartphone Defence Ltd.

9 CROWELL & MORING LLP
10 515 South Flower Street, 40th Floor
11 Los Angeles, California 90071
12 Phone: (213) 622-4750
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14 Email: aavsec@crowell.com
wfrankel@crowell.com
vgalluzzo@crowell.com
msarwar@crowell.com
dhughes@crowell.com

15 Dated: February 28, 2023

16 */s/ Christian W. Conkle*

17 Larry C. Russ
18 Nathan D. Meyer
19 Christian W. Conkle
20 **Counsel for Defendant/
Counter-Plaintiff**
21 **Phonecheck Solutions, LLC**

22 RUSS AUGUST & KABAT
23 12424 Wilshire Boulevard, 12th Floor
24 Los Angeles, California 90025
25 Phone: (310) 826-7474
26 Fax: (310) 826-6991
27 Email: lruss@raklaw.com
nmeyer@raklaw.com
cconkle@raklaw.com

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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4 DATED: February 28, 2023

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7 Patricia Donahue
8 United States Magistrate Judge
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1 **SIGNATURE ATTESTATION**

2 Pursuant to Local Civil Rule 5-4.3.4(a)(2), the undersigned attests that the
3 signatories listed, and on whose behalf this filing is submitted, concur in the filing's
4 content and have authorized the filing.

5
6 Dated: February 28, 2023

/s/ Dalton K. Hughes

7 Dalton K. Hughes

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EXHIBIT A

AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand
the Protective Order that was issued by the United States District Court for the Central
District of California on _____ [date] in the case of _____
[insert formal name of the
case and the number and initials assigned to it by the court]. I agree to comply with
and to be bound by all the terms of this Protective Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
for contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Protective Order to any person or entity
except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: